

Nº. 49164-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON  
Respondent,

v.

ROBERT REED,  
Appellant.

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REPLY BRIEF OF APPELLANT

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Appeal from the Superior Court of Cowlitz County,  
Cause No. 14-1-00679-6  
The Honorable Michael Evans, Presiding Judge

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A. ARGUMENT

**The State misrepresents Mr. Reed's argument on appeal and fails to reply to his actual argument.**

In his Opening Brief, Mr. Reed argued that the prosecutor committed misconduct by making improper argument during closing argument.<sup>1</sup> Mr. Reed raised this argument as part of his larger argument that his trial counsel was ineffective for failing to object to the prosecutor's improper argument.<sup>2</sup>

In its Response Brief, the State argues that "Reed waived his claim of prosecutor misconduct when he did not object to the prosecutor's closing argument...Although Reed did not object to the prosecutor's closing argument, he now claims misconduct for the first time on appeal."<sup>3</sup> The State misrepresents Mr. Reed's true argument.

Mr. Reed and the State agree that Mr. Reed's trial counsel failed to object to the prosecutor's closing argument, and that failure of Mr. Reed's trial counsel to object to the State's improper closing argument waives a claim of prosecutorial misconduct on appeal. However, Mr. Reed challenges the prosecutor's closing argument in the context of a claim of ineffective assistance of counsel and cumulative error, not as a stand-alone claim of prosecutorial misconduct raised for the first time on appeal. The

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<sup>1</sup> Appellant's Opening Brief, p. 30-33.

<sup>2</sup> Appellant's Opening Brief, p. 33-34.

<sup>3</sup> Respondent's Brief, p. 25.

State fails to address why it was not ineffective assistance of counsel for Mr. Reed's trial counsel to fail to object to the State's improper vouching for the credibility of J.R. based on facts not contained in the record.

B. CONCLUSION

For the reasons stated above and in Mr. Reed's Opening Brief, this court should vacate Mr. Reed's convictions and remand his case for a new trial.

DATED this 24<sup>th</sup> day of April, 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Reed Speir", written over a horizontal line.

Reed Speir, WSBA No. 36270  
Attorney for Appellant

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 24<sup>th</sup> day of April, 2014, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Eric H Bentson  
Cowlitz County Prosecutor's Office  
312 SW 1st Ave Rm 105  
Hall Of Justice  
Kelso WA 98626-1799

And to:

Robert Richard Reed  
DOC#962347  
Coyote Ridge Corrections Center  
P.O. Box 769  
Connell WA 99326

Signed at Tacoma, Washington this 24<sup>th</sup> day of April, 2017.



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Reed Speir, WSBA No. 36270

**LAW OFFICE OF REED SPEIR**  
**April 24, 2017 - 11:47 AM**  
**Transmittal Letter**

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